

CONSENT 11/1/04 11/1/04 15

**Garry Rhodes**

**From:** Daniel C. Hill [dhill@AndersonKreiger.com]  
**Sent:** Tuesday, September 14, 2004 2:13 PM  
**To:** Garry Rhodes  
**Cc:** Stephen Anderson  
**Subject:** Acton/40B - Main Street (Franklin Place)

Dear Garry:

I have reviewed the executed Declaration of Restrictive Covenants forwarded to me from the developer's attorney in this matter. I understand that you have the original executed document. The Conservation Commission should vote to accept the Declaration under pursuant to its powers under G.L. c. 40, s. 8(c), and sign the acceptance form attached to the Declaration before a notary. The Board of Selectmen should then approve the acceptance by signing the approval form attached to the Declaration before a notary.

Once the Declaration has been fully executed, it should be returned to Attorney Peabody with instructions to record the Declaration at the Registry of Deeds, and to deliver certified copies of the recorded documents (evidencing the recording) to the Town Clerk and the Conservation Commission. The Conservation Commission should submit a copy of the Declaration to the Division of Conservation Services (EOEA) for their administrative approval (they should be familiar with the process, but if not, they may contact me). If you have any questions, please contact me.

Thanks, Dan

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Daniel C. Hill, Esq.  
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GRAHAM & HARSIP, P.C.

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JAY R. PEABODY

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September 1, 2004

Mr. Daniel C. Hill, Town Counsel  
c/o Acton Board of Appeals  
472 Main Street  
Acton, MA 01720

**RE: Franklin Place Comprehensive Permit Application**

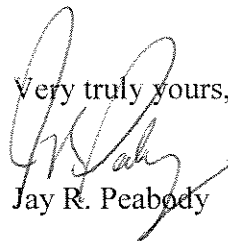
Dear Town Counsel,

Per your letter of August 4, 2004 to the members of the Board of Appeals for the Town of Acton, please find enclosed the requested executed Declaration of Restrictive Covenants, pursuant to Condition L.5 of the Decision governing the above-referenced project.

Please arrange to have the Declaration accepted and executed by the Conservation Commission and the Board of Selectmen for the Town.

Once executed, please return the Declaration to our office so that we may arrange to have the same recorded at the requisite Registry of Deeds.

Please feel free to contact me with questions or concerns.

Very truly yours,  
  
Jay R. Peabody

JRP  
Enclosure  
cc:  
Client  
Don P. Johnson, Town Manager  
Conservation Commission  
Daniel C. Hill, Esq.

## DECLARATION OF RESTRICTIVE COVENANTS

For One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Franklin Place Partners, LLC, a Massachusetts limited liability company with a principal place of business at 178 Great Road, Acton, MA 01720, on behalf of itself and its successors and assigns ("the Grantor"), owner of certain property located at 520 Main Street by virtue of a deed dated April 9, 2004 and recorded in the Middlesex South District Registry of Deeds at Book 42628, Page 95, as more particularly described on the attached Exhibit A ("the Burdened Premises") and shown on a plan entitled "Comprehensive Permit Plan For Franklin Place, 520 Main Street, Acton, Massachusetts, Grading, Drainage and Utilities Plan For: Franklin Place Partners, LLC", scale 1" = 30', dated April 3, 2003, last revised May 4, 2004, prepared by Stamski and McNary, Inc., recorded with said Deeds herewith (the "Plan"), grants to the Town of Acton, a Massachusetts municipal corporation with a principal place of business at 472 Main Street, Acton, Massachusetts, acting by and through its Conservation Commission (together with its successors and assigns, the "Town") for conservation purposes under G.L. c 40, § 8C, the following covenants and restrictions:

1. Restriction. The area designated as "Bordering Vegetated Wetlands" (hereinafter, the "BVW") as shown on the Plan, and all land within 75 feet of the edge of the BVW as shown on the Plan, are hereby made subject to the following restrictions, which are imposed for the benefit of the Town and which may be enforced by the Acton Conservation Commission or the Acton Board of Selectmen:

- (a) No building or other temporary structure or permanent structure (including without limitation tennis courts and swimming pools) shall be erected within the BVW or within 75 feet from the edge of the BVW (the "No-Build Zone") as

shown on the Plan, nor may boats, trailers, motor vehicles, or other heavy equipment be stored temporarily or permanently within the No-Build Zone.

(b) The Grantor shall neither perform, nor permit others to perform, any of the following activities within the BVW or within 50 feet from the edge of the BVW (the "No-Disturb Zone") as shown on the Plan, subject only to the exceptions set forth in subparagraph (c) below:

- (i) constructing any building, tennis court, swimming pool, road, way, trail, landing strip, parking space, fence, wall, sign, billboard, antenna, underground storage tank, utility pole, tower, conduit, or any other temporary structure or permanent structure;
- (ii) mining, excavating, dredging, or removing from the No-Disturb Zone any soil, loam, peat, gravel, sand, rocks, or other mineral resource or natural deposit;
- (iii) placing, filling, dumping, storing of soil, refuse, trash, fuel, waste, vehicle bodies or parts, junk, or other waste substance, natural or artificial, whatsoever;
- (iv) cutting, removing or otherwise destroying trees or other vegetation excluding grass;
- (v) subdivision of the No-Disturb Zone;
- (vi) activities detrimental to water quality, drainage, flood control, water conservation, erosion control, or soil conservation; and

- (vii) any other use of the No-Disturb Zone that would materially impair significant conservation interests unless necessary for the protection of the conservation interests that are the subject of this Restriction.
- (c) The restrictions set forth under subparagraphs (a) and (b) above shall not apply to the initial construction of the building containing Units #1 and #2 and the drainage infrastructure adjacent to Main Street as shown on the Plan, and as contemplated under Section L.3 of the Comprehensive Permit issued by the Acton Zoning Board of Appeals on March 24, 2004 recorded with said Deeds in Book 43185, Page 515 (the "Comprehensive Permit"). The restrictions set forth above shall apply, however, to any material changes subsequently made to said building and drainage infrastructure, but shall not apply to demolition for the purpose of reconstruction and maintenance of the same provided that the size and shape of said building or drainage infrastructure reconstructed is not substantially different than the original design.

2. Common Area Landscaping. All landscaping created or installed by the Grantor on the Burdened Premises prior to the sale of the twelfth condominium unit on the Burdened Premises shall be maintained by the Grantor and its successors and assigns, and the Condominium Association thereafter, in perpetuity, as provided under Section F.4 of the Comprehensive Permit

3. Term. The restrictions described in Section 1 above shall run with the land and be binding upon the Grantor, its successors and assigns in perpetuity or for the longest period permitted by law and shall be enforceable by the Town and/or by the Conservation Commission and the Board of Selectmen of the Town of Acton. These restrictions are granted to the Town as

gift for public purposes as that term is used in G.L. c.184, § 23, and are thus not limited to a term of thirty years, but if ever determined to be not such a gift or otherwise deemed to be subject to G.L. c. 184, § 23, then they are limited to the term of one hundred (100) years. Each of these restrictions is acknowledged to be an "other restriction held by a governmental body" as that term is used in G.L. c.184, § 26 and thus not subject to G.L. c.184, §§ 27-30. Nevertheless, the Town is authorized to record or file any notices or instruments appropriate to assuring the enforceability of these restrictions for the longest period permitted by law. The Grantor on behalf of itself and its successors and assigns irrevocably appoints the Town its attorney-in-fact to execute, acknowledge, deliver and record on its behalf: (i) any notice of restriction under G.L. c.184, §26 or any other statute now or hereafter requiring such notice to be recorded in order to extend the time of enforceability of these restrictions; and/or (ii) any instrument by which the Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts or other officer of the Commonwealth of Massachusetts approves these restrictions as Conservation Restrictions under G.L. c.184, § 32 or any other statute now or hereafter requiring such approval to be recorded in order to ensure the perpetual enforceability of these restrictions; and/or (iii) any consent to the recording of such notice or approval. Without limiting the foregoing, the Grantor, on behalf of itself and its successors and assigns, agrees to execute such instruments and/or consent in writing to the recording of such instruments upon request. The Grantor and the Town intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.

4. Grantor's Representations, Covenants and Warranties. The Grantor hereby represents, covenants and warrants as follows:

- (a) The Grantor (i) is a limited liability corporation, duly organized under the laws of the Commonwealth of Massachusetts, and is qualified to transact business under the laws of this State, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, (iii) has the full legal right, power and authority to execute and deliver this Declaration, and (vi) this Declaration has been duly authorized by all necessary acts of the Grantor.
- (b) The execution and performance of this Declaration by the Grantor (i) will not violate or, as applicable, has not violated any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated<sup>fr</sup> any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Grantor is a party or by which it is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Grantor will, at the time of execution and delivery of this Declaration, have good and marketable title to the Burdened Premises free and clear of any lien or encumbrance (subject to encumbrances created pursuant to the Comprehensive Permit), except the following mortgage which, however, is subordinated to this covenant:

Mortgage granted by the Grantor to Webster Bank, N.A. (formerly known as First Federal Savings Bank of America), dated April 27, 2003, and recorded with the Middlesex South District Registry of Deeds at Book 42628, Page 98.

- (d) The Grantor intends, declares and covenants on behalf of Grantor and Grantor's successors and assigns (i) that this Declaration and the covenants, agreements, rights and restrictions contained herein shall be and are covenants running with the land, encumbering the Burdened Premises, and are binding upon the Grantor's successors in title, (ii) are not merely personal covenants of the Grantor, and (iii) shall bind the Grantor, and Grantor's successors and assigns and inure to the benefit of the Town, and its successors and assigns. Grantor hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Declaration to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

5. Notice. Any notices, demands or requests that may be given under this Declaration shall be sufficiently served if given in writing and delivered by hand or mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or such other addresses as may be specified by any party (or its successor) by such notice.

Grantor:

Franklin Place Partners, LLC  
178 Great Road  
Acton, MA 01720

*with a copy to:*

Graham & Harsip, P.C.  
289 Great Road  
Acton, MA 01720



Town:

Acton Board of Appeals  
Town of Acton  
472 Main Street  
Acton, MA 01720

*with a copy to:*

Acton Conservation Commission  
Town of Acton  
472 Main Street  
Acton, MA 01720

Any such notice, demand or request shall be deemed to have been given on the day it is hand delivered or mailed.

6. Enforcement. The rights hereby granted shall include the right of the Town to enforce this Declaration by appropriate legal proceedings and to obtain injunctive and other appropriate relief against any violations including without limitation relief requiring restoration of the Burdened Premises to its condition prior to any such violation (it being agreed that there shall be no adequate remedy at law for such violation), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Town.

7. Severability. If any provisions hereof or the application thereof to any person or circumstance shall come, to any extent, to be invalid or unenforceable, the remainder hereof, or the application of such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the Grantor assents to this covenant, executed as a sealed instrument  
this 11 day of August, 2004.

FRANKLIN PLACE PARTNERS, LLC

By: A. Peter Andersen

A. Peter Andersen, Member

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

August 11, 2004

On this 11 day of Aug, 2004, before me, the undersigned Notary Public, personally appeared A. Peter Andersen, ~~proved~~ to me through satisfactory evidence of identification, which was personally known to me to have the identity claimed, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Authorized Signatory of Franklin Place Partners, LLC, a Massachusetts limited liability company.

Joanne Martin  
Notary Public

My Commission Expires: 4/18/08

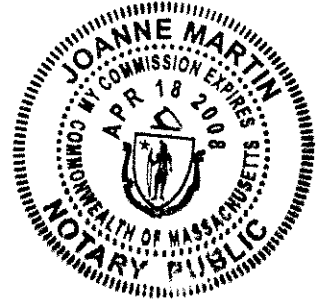


EXHIBIT A

PROPERTY DESCRIPTION FOR BURDENED PREMISES

The land in Acton, Middlesex County, Massachusetts, in that part of Acton called Acton Center, containing five and one quarter acres and bounded and described as follows:

Beginning at the Southwesterly corner thereof at land formerly of Moses Taylor and later of one Fairbanks and at Main Street or Lowell Road;

- |        |   |
|--------|---|
| Thence | Northerly along said Taylor land two hundred thirty-nine (239) feet to a corner of wall;  |
| Thence | Westerly by the wall on said Taylor land about one hundred fifty (150) feet to a corner at land formerly of Charles Crocker;  |
| Thence | Northeasterly by the wall sixty-four (64) feet, Northwesterly eighty-three (83) feet, Southwesterly thirty-one (31) feet and Northwesterly one hundred fifty-one (151) feet, Northeasterly one hundred seventy-two (172) feet and Northerly three hundred twenty-two (322) feet, all by land formerly of Charles Crocker et ux to land formerly of John McCarthy; |
| Thence | Northeasterly along the wall by said McCarthy land eighty-one (81) feet to a corner;  |
| Thence | Southeasterly along the wall by said McCarthy land about six hundred fifty-seven (657) feet to Main Street or Lowell Road;  |
| Thence | Westerly along said Main Street about three hundred eighteen (318) feet to the place of beginning.  |

SUBORDINATION OF MORTGAGE AND CONSENT

Webster Bank, National Association, holder of a Mortgage and Security Agreement from Franklin Place Partners, LLC dated April 27, 2004, recorded with the Middlesex South District Registry of Deeds at Book 42628, Page 98 (the "Mortgage"), hereby subordinates the Mortgage to the foregoing Declaration of Restrictive Covenants by and between Franklin Place Partners, LLC and the Town of Acton and consents to the recording thereof.

IN WITNESS WHEREOF, the said Webster Bank, National Association, has executed and delivered this Subordination and Consent in its name and behalf by Graham M.W. Kilvert, its Senior Vice President, duly authorized this 30th day of August, 2004.

WEBSTER BANK, N.A.

By: Graham M.W. Kilvert SVP.

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

August 30, 2004

On this 30 day of August, 2004, before me, the undersigned Notary Public, personally appeared Graham M.W. Kilvert, proved to me through satisfactory evidence of identification, which was personally known to me to have the identity claimed, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as Authorized Signatory of Webster Bank, N.A.

[Signature]  
Notary Public

My Commission Expires: 6-11-2010

**Acceptance of Grant:**

The Conservation Commission of the Town of Acton, pursuant to the authority given by G.L. c.40, §8C and every other authority appertaining, hereby accepts the foregoing Declaration of Restrictive Covenants.

TOWN OF ACTON  
CONSERVATION COMMISSION

*Jeff Rogers*  
*James Martians*  
*Michael* *gr*  
*Susan D. Phin*

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

October 6,  
August, 2004

On this 6 day of October 2004, before me, the undersigned Notary Public, personally appeared *Jeff Rogers*, proved to me through satisfactory evidence of identification, which was personally known to me to have the identity claimed, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as Member of the Town of Acton Conservation Commission.

*Andrea H. Ristine*  
Notary Public

My Commission Expires:



ANDREA H. RISTINE  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
February 27, 2009

**Approval of Selectmen:**

We, the undersigned Board of Selectmen of the Town of Acton, Massachusetts, hereby certify that at a meeting duly held on \_\_\_\_\_, 2004, the Selectmen voted to approve the acceptance of foregoing Declaration of Restrictive Covenants pursuant to G.L. c.40, §8C.

TOWN OF ACTON  
BOARD OF SELECTMEN

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

Middlesex, ss.

August \_\_\_\_\_, 2004

On this \_\_\_\_ day of \_\_\_\_\_, 2004, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was personally known to me to have the identity claimed, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as Member of the Town of Acton Board of Selectmen.

Notary Public

My Commission Expires: